

**ASSEMBLY BILL**

**No. 323**

**Introduced by Assembly Member Gordon**

February 10, 2005

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An act to add Section 365.5 to the Code of Civil Procedure, relating to professional negligence.

LEGISLATIVE COUNSEL'S DIGEST

AB 323, as introduced, Gordon. Professional negligence: real estate brokers or salespersons.

Under existing law, an action is commenced when the complaint is filed. In the case of licensed or certified health care providers, no action based upon the health care provider's professional negligence may be commenced unless the defendant has been given at least 90 days' prior notice of the intention to commence the action, as specified.

This bill would preclude the commencement of an action based upon the professional negligence of a licensed real estate broker or salesperson until the defendant has been given at least 60 days' prior notice of the intention to commence the action, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 365.5 is added to the Code of Civil
- 2 Procedure, to read:
- 3 365.5. (a) No action based upon the professional negligence
- 4 of a person holding a valid real estate broker or salesperson
- 5 license issued pursuant to Chapter 3 (commencing with Section

1 10130) of Part 1 of Division 4 of the Business and Professions  
2 Code may be commenced unless the defendant has been given at  
3 least 60 days' prior notice of the intention to commence the  
4 action.

5 (b) No particular form of notice is required, but it shall notify  
6 the defendant of the legal basis of the claim and the type of loss  
7 sustained, including the specific nature of the injuries suffered.

8 (c) The notice may be served in the manner prescribed in  
9 Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

10 (d) If the notice is served within 60 days of the expiration of  
11 the applicable statute of limitations, the time for the  
12 commencement of the action shall be extended 60 days from the  
13 service of the notice.

14 (e) This section is not applicable with respect to any defendant  
15 whose name is unknown to the plaintiff at the time of filing the  
16 complaint and who is identified in the complaint by a fictitious  
17 name, as provided in Section 474.

18 (f) For the purposes of this section, "professional negligence"  
19 means a negligent or fraudulent act, or omission to act, by a  
20 licensed real estate broker or salesperson in the rendering of  
21 professional services, within the scope of services for which the  
22 broker or salesperson is licensed.